

UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NEW YORK

HILDA L. SOLIS, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

SWIM CLEAN POOL SERVICE, INC.,  
a Corporation  
d.b.a. SWIM CLEAN POOL SERVICE; and  
RICHARD SHIRE, Individually  
and as Owner; and  
MICHELLE SHIRE, Individually  
and as Owner; and  
ROBERT CRANE, Individually  
and as Owner

Defendants

Civil Action File

No.

13-CV-0196  
SJF, WDW  
CONSENT JUDGMENT

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 01 2013 ★

**LONG ISLAND OFFICE**

Plaintiff, the Secretary of Labor, has filed her Complaint and defendants SWIM CLEAN POOL SERVICE, INC. d.b.a. SWIM CLEAN POOL SERVICE; RICHARD SHIRE, individually and as Owner, MICHELLE SHIRE, individually and as Owner; and ROBERT CRANE, individually and as Owner, appeared by Counsel, waive their answer, and agree to the entry of this judgment without contest. By executing this Consent Judgment, defendants waive formal service of process of the summons and complaint in this matter.

Defendants SWIM CLEAN POOL SERVICE, INC. d.b.a. SWIM CLEAN POOL SERVICE, RICHARD SHIRE, individually and as Owner, MICHELLE SHIRE, individually and as Owner, and ROBERT CRANE, individually and as Owner, appeared by Counsel, acknowledge their responsibilities pursuant to this agreement, and acknowledge that they will be subject to sanctions in contempt of this court if they fail to comply with the provisions of this

Judgment. It is, therefore, upon motion of the attorneys for plaintiff and for cause shown ORDERED that:

I. Defendants, their officers, employees, agents, and all persons acting or claiming to act in the defendants' behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of sections 6, 7, 11(c), 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. Section 201 et seq.), (the Act), in any of the following manners:

(1) Defendants shall not, contrary to Section 6 of the Act, pay to any of their employees who in any workweek are engaged in commerce or in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at rates less than those which are now, or which in the future may become, applicable under Section 6 of the Act.

(2) Defendants shall pay employees at time and one-half their regular hourly rates for all hours worked over 40 per week, and shall not, contrary to Section 7 of the Act, employ any of their employees in any workweek for workweeks longer than the hours now, or which in the future become, applicable under Sections 7 and 15(a) (2) of the Act, unless the employee receives compensation in compliance with the Act.

(3) Defendants shall make, keep, and preserve adequate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the Regulations issued pursuant to Section 11(c) of the Act and found at 29 CFR Part 516.

II. Defendants SWIM CLEAN POOL SERVICE, INC. d.b.a. SWIM CLEAN POOL SERVICE; RICHARD SHIRE, individually and as Owner; MICHELLE SHIRE, individually

and as Owner; and ROBERT CRANE, individually and as Owner individually and as Owner, are enjoined and restrained from withholding the payment of a total of **\$26,958.21 (\$245.56 in minimum wages and \$17,637.17 in overtime compensation, plus \$134.12 in interest, plus \$8,941.36 in liquidated damages)** due certain employees set forth in Exhibit A. Payment of this amount will be made in the total amount by **October 7, 2013** which is in accordance with the amounts due and date set forth in Exhibit B.

All payments shall be in separate cashier or certified checks made payable to **"Wage and Hour Division - Labor"** with **"Case No. 1639329"** written on the face of each check.

The checks shall be sent to:

**U.S. Department of Labor/Wage & Hour Division  
The Curtis Center, Suite 850, West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317**

III. On or before the dates indicated on Exhibit B, defendants shall send a copy of each of the checks to:

**U.S. Department of Labor/Wage & Hour Division  
1400 Old Country Road, Suite 410  
Westbury, New York 11590-5119  
Attn: Richard Mormile, Assistant Director**

IV. Neither defendants nor anyone acting on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid as back wages under this Judgment.

V. The plaintiff shall deliver the proceeds of each check less any legal deductions to the employees named on Exhibit A. ~~Any sums not distributed to the employees or to their personal~~ representatives, because of inability to locate the proper persons or because of such persons' refusal to accept such sums, shall be deposited with the Clerk of this Court who shall forthwith deposit such money with the Treasurer of the United States pursuant to 28 U.S.C. §2041 and §2042.

VI. Defendants shall provide to plaintiff the social security numbers and last known addresses of the defendants' employees and former employees to be paid under this judgment.

VII. Defendants shall pay civil money penalties in the amount **\$3,021.92 (\$2,992.00 in civil money penalties plus \$29.92 in interest) no later than November 7, 2013**. Payment shall be made by separate cashier or certified check[s] made payable to **"Wage and Hour Division - Labor"** with **"Civil Money Penalty - FLSA Case No. 1639329"** written on the face of the check for **\$3,021.92**. Payment of this amount will be made in accordance with the amount and due date set forth in Exhibit B.

The certified check[s] shall be sent to:

**U.S. Department of Labor/Wage Hour Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317**

On or before November 7, 2013, defendants shall send a copy of the check to Richard Mormile, Assistant Director as set forth in paragraph III above.

VIII. If the defendants fail to make an installment payment on Exhibit B without making up the arrearage within two weeks after written notice to defendants, the entire balance shall become due and payable immediately.

IX. Defendants shall place FLSA posters in English and in any other language spoken by the employees. These posters will be provided by the Wage and Hour Division as available. Defendants shall display the posters where employees may view them.

X. Defendants shall orally inform all their employees in English and in any other language spoken by the employees of their rights under the Fair Labor Standards Act, and the terms of this Judgment, including the payment of minimum wages and overtime and the rights of

employees to engage in activity protected by the Act without fear of retaliation. The defendants shall so inform their employees within thirty (30) days of the entry of Judgment on a workday.

XI. Neither the commencement of this action nor the provisions of this Consent Judgment shall in any way affect, determine, or prejudice any and all legal rights of any employees of defendant not listed in Exhibit A of this Judgment, be they current or former employees, to file any action against defendant under section 16(b) of the Act or likewise for any current or former employee listed on Exhibit A of this Judgment to file any action against defendant under section 16(b) of the Act for any violations alleged to have occurred after **June 30, 2012**.

XII. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

SO ORDERED:

DATED: 2/1/13  
Central Islip, NY

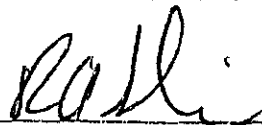
s/ Sandra J. Feuerstein

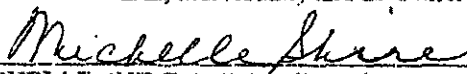
UNITED STATES DISTRICT JUDGE

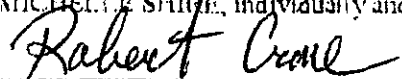
Defendants have appeared by counsel and  
Consent to the entry of this Judgment.

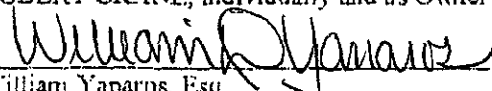
SWIM CLEAN POOL SERVICE, INC.  
d.b.a. SWIM CLEAN POOL SERVICE

BY:

  
RICHARD SHIRE, individually and as Owner

  
MICHELLE SHIRE, individually and as Owner

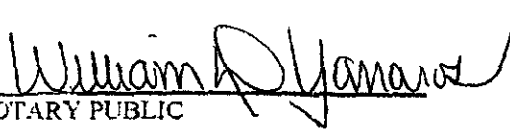
  
ROBERT CRANE, individually and as Owner

  
William Yanaros, Esq.  
Widder & Yanaros, Attorney at Law  
105 Route 112 2nd Floor  
Port Jefferson Station, NY 11776

Attorneys for the Defendants

STATE OF NEW YORK                    )  
  ) SS:  
COUNTY OF SUFFOLK                )

On the 21<sup>st</sup> day of December 2012 before me personally appeared RICHARD SHIRE  
to me known and known to me to be the individual described in and who executed the foregoing  
instrument and he duly acknowledged to me that he executed the same.

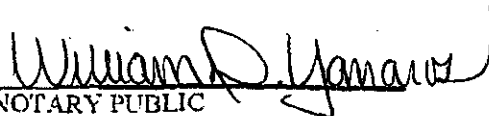
  
NOTARY PUBLIC

WILLIAM D. YANAROS  
Notary Public, State of New York  
No. 02YA4636445  
Qualified in Suffolk County  
Commission Expires July 31, 2014

STATE OF NEW YORK            )  
  : SS:

COUNTY OF SUFFOLK            )

On the 21st day of December 2012 before me personally appeared MICHELLE SHIRE  
to me known and known to me to be the individual described in and who executed the foregoing  
instrument and he duly acknowledged to me that he executed the same.

  
NOTARY PUBLIC

WILLIAM D. YANAROS  
Notary Public, State of New York  
No. 02YA4636445  
Qualified in Suffolk County  
Commission Expires July 31, 2014

STATE OF NEW YORK                     )  
  : SS:  
COUNTY OF SUFFOLK                     )

On the 3rd day of January 2013 before me personally appeared ROBERT CRANE to  
me known and known to me to be the individual described in and who executed the foregoing  
instrument and he duly acknowledged to me that he executed the same.

  
NOTARY PUBLIC

WILLIAM D. YARNARUS  
Notary Public, State of New York  
No. 02YA4636445  
Qualified in Suffolk County  
Commission Expires July 31, 2014

## EXHIBIT A

SWIM CLEAN POOL SERVICE, INC.  
d.b.a. SWIM CLEAN POOL SERVICE  
CASE ID 1639329

<u>Last Name</u>	<u>First Name</u>	<u>BWs Due</u>	<u>Liquidated Damages</u>	<u>Totals</u>
CASTILLO	PEDRO	\$324.61	\$162.30	\$486.91
DIAZ	RICHARD	\$468.22	\$234.11	\$702.33
FANNING	JESSE	\$3,411.57	\$1,705.78	\$5,117.35
GOMEZ	FERMIN	\$2,980.80	\$1,490.40	\$4,471.20
HARRISON	JAMES	\$1,574.31	\$787.15	\$2,361.46
LENNON	MICHAEL	\$6,431.71	\$3,215.85	\$9,647.56
SARAVIA	JAIRO	\$286.97	\$143.48	\$430.45
ZANFARDINO	NIEL	\$2,404.54	\$1,202.27	\$3,606.81
TOTALS	-	\$17,882.73	\$8,941.36	\$26,824.09

## EXHIBIT A

## EXHIBIT B

SWIM CLEAN POOL SERVICE, INC.  
d.b.a. SWIM CLEAN POOL SERVICE, INC  
CASE ID 1639329

<u>Payment No.</u>	<u>DATE DUE</u>	<u>AMOUNT DUE</u>	<u>INTEREST DUE</u>	<u>TOTAL DUE</u>
1	12/07/2012	\$2,438.55	\$5.26	\$2,443.81
2	01/07/2013	\$2,438.55	\$3.22	\$2,441.77
3	02/07/2013	\$2,438.55	\$10.21	\$2,448.76
4	03/07/2013	\$2,438.55	\$2.16	\$2,440.71
5	04/07/2013	\$2,438.55	\$40.33	\$2,478.88
6	05/07/2013	\$2,438.55	\$6.14	\$2,444.69
7	06/07/2013	\$2,438.55	\$4.11	\$2,442.66
8	07/07/2013	\$2,438.55	\$2.08	\$2,440.63
9	08/07/2013	\$2,438.55	\$36.80	\$2,475.35
10	09/07/2013	\$2,438.55	\$2.10	\$2,440.65
11	10/07/2013	\$2,438.59	\$21.71	\$2,460.30
<b>TOTALS:</b>	-	<b>\$26,824.09</b>	<b>\$134.12</b>	<b>\$26,958.21</b>
12*	11/07/2013	\$2,992.00	\$29.92	\$3,021.92
<b>*CMP PAYMENT</b>				

## EXHIBIT B